IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

OP.No. 19605 of 2002(H)

PETITIONER:

CYRIAC JOSEPH, AGED 35 YEARS,
S/O. JOSEPH, THEKKUMPERUMALIL HOUSE,
AMANAKARA P.O., RAMAPURAM, KOTTAYAM DIST.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SRI.FRANCIS THOMAS

RESPONDENTS:
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1. THE DEPUTY LABOUR COMMISSIONER,
OFFICE OF THE DEPUTY LABOUR COMMISSIONER,
KOTTAYAM.

2. THE DISTRICT LABOUR OFFICER, KOTTAYAM.

3. P.R. SHAJI, PULIYANIPPUZHA HOUSE,
RAMAPURAM BAZAR, P.O. VELLILAPPALLY,
KOTTAYAM DISTRICT.

4. K.D. GOPI, VARIYANIYIL HOUSE,
KONDATTU, CHAKKAMPUZHA P.O. PALA,
KOTTAYAM DISTRICT.

5. K.M. RAJU, KOCHAPPALLIL HOUSE,
CHAKKAMPUZHA P.O, RAMAPURAM,
KOTTAYAM DISTRICT.

BY GOVERNMENT PLEADER SRI.T.T. MAHMOOD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.19605 OF 2002

ORDER ON C.M.P.NO.33605 OF 2002 IN O.P.NO.19605 OF 2002 DISMISSED.

29.11.2007 **SD/- S. SIRI JAGAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: **COPY OF ORDER IN CRL.M.P.1230/99 SESSIONS COURT, KOTTAYAM DATED 6.10.99.**

EXT.P2: **COPY OF STATEMENT OF TODDY MEASURED AND WAGES DRAWN BY EMPLOYEES OF THE SHOPS SUBMITTED BY UNION BEFORE WELFARE FUND INSPECTOR.**

EXT.P3: **COPY OF ORDER NO.B.623/00 DATED 22-4-02 OF R1.**

EXT.P4: **COPY OF ORDER NO.B 622/00 DATED 1.4.02 OF R1.**

EXT.P5: **COPY OF ORDER B.658/00 DATED 31.3.02 OF R1.**

EXT.P6: **COPY OF ORDER IN C.M.P.31087/01 IN O.P.19187/01 DATED 29.6.01 HIGH COURT OF KERALA.**

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No. 19605 OF 2002

Dated this the 29th day of November, 2007

JUDGMENT

In this original petition, the petitioner, who was the licencee of a toddy shop and the employer of respondents 3 to 5, challenges orders passed by the 1st and 2nd respondents, directing payment of Subsistence Allowance to respondents 3 to 5. Similar orders obtained by other employees were challenged by the petitioner in O.P.Nos.8476, 9141, 9204, 19187 of 2001 and W.P. (c) No.14195/2004. In those cases a learned Single Judge of this Court passed the following judgment:

> "The orders passed by the first respondent in the matter of subsistence allowance as claimed by the party respondents are under challenge in these writ petitions. Petitioner has three vital contentions (1) the contention regarding the coverage of toddy shop under the provisions of the kerala Payment of Subsistence Allowance Act has not been considered by the first respondent, (2) though a report of the concilliation officer has been relied on for deciding the liability, the petitioner has not been furnished a copy of the report and

(3) in any case, the question as to whether party respondents in the facts and circumstances are eligible to get the allowance, since they have not turned up for work and since admittedly the shop has not functioned after 23.8.1999 pursuant to the murder of the brother of the petitioner in which case the employees in the shop were on the array of the accused, also has not been considered. On going through the impugned orders, it is fairly clear that the contentions raised by the petitioner are vital to the decision. The relevant factors thus having been left out, it is only appropriate that the first respondent considers the matter afresh with notice to the petitioner and contesting respondents and passes a proper order adverting to the contentions taken by the parties. The impugned orders are accordingly quashed and the matter is remitted to the first respondent for fresh orders in accordance with law, in the light of the observations made in this judgment.

W.P. (C)No. 14195/04

The only difference in this case is that the period for which the allowance is claimed is different. For all the reasons stated above, the impugned order in this writ petition also is quashed and the matter is remitted to the first respondent with a direction to consider the matter afresh with notice to all the parties and pass appropriate orders. The

> need full in this regard shall be done within four months from the date of production of a copy of the judgment."

In view of the said judgment, I am of opinion that the orders impugned in this original petition are also liable to be quashed. Accordingly, the same are quashed and the matter is remitted to the 1st respondent for fresh orders in accordance with law in the light of the observations made in that judgment.

The writ petition is disposed of as above.

S. SIRI JAGAN, JUDGE

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